

Judge Edward F. Shea

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GENEX COOPERATIVE, INC.,

Plaintiff,

v.

JORGE T. CONTRERAS, DANIEL
R. SENN, ERASMO J. VERDUZCO

Defendants.

No. 2:13-cv-03008-EFS

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information from the parties and potentially third parties for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with FRCP 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable

1 legal principles, and it does not presumptively entitle parties to file confidential
2 information under seal.
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4 **2. “CONFIDENTIAL” MATERIAL**

5 “Confidential” material shall include the following documents and tangible
6 things if otherwise relevant or discoverable: (1) business records detailing costs
7 and margins of products and services sold; (2) non-public documents containing
8 financial performance data; (3) customer and prospect lists; (4) business plans
9 and/or strategic marketing documents; (5) compensation records; and (6)
10 compensation plans.
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14 **3. SCOPE**

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16 The protections conferred by this agreement cover not only confidential
17 material (as defined above), but also (1) any information copied or extracted from
18 confidential material; (2) all copies, excerpts, summaries, or compilations of
19 confidential material; and (3) any testimony, conversations, or presentations by
20 parties or their counsel that might reveal confidential material. However, the
21 protections conferred by this agreement do not cover information that is in the
22 public domain or becomes part of the public domain through trial or otherwise.
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1 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

2 4.1 Basic Principles. A receiving party may use confidential material that
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4 is disclosed or produced by another party or by a non-party in connection with this
5 case only for prosecuting, defending, or attempting to settle this litigation.
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7 Confidential material may be disclosed only to the categories of persons and under
8 the conditions described in this agreement. Confidential material must be stored
9 and maintained by a receiving party at a location and in a secure manner that
10 ensures that access is limited to the persons authorized under this agreement.
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13 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
14 otherwise ordered by the court or permitted in writing by the designating party, a
15 receiving party may disclose any confidential material only to:
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17 (a) the receiving party's counsel of record in this action, as well as
18 employees of counsel to whom it is reasonably necessary to disclose the
19 information for this litigation;
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22 (b) the receiving party and, if applicable, its officers, directors, and
23 employees (including in house counsel) to whom disclosure is reasonably
24 necessary for this litigation;
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1 (c) experts and consultants to whom disclosure is reasonably necessary for
2 this litigation and who have signed the “Acknowledgment and Agreement to Be
3 Bound” (Exhibit A);
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5 (d) the court, court personnel, and court reporters and their staff;
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7 (e) copy or imaging services retained by counsel to assist in the duplication
8 of confidential material, provided that counsel for the party retaining the copy or
9 imaging service instructs the service not to disclose any confidential material to
10 third parties and to immediately return all originals and copies of any confidential
11 material;
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14 (f) during their depositions, witnesses in the action to whom disclosure is
15 reasonably necessary and who have signed the “Acknowledgment and Agreement
16 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or
17 ordered by the court. Pages of transcribed deposition testimony or exhibits to
18 depositions that reveal confidential material must be separately bound by the court
19 reporter and may not be disclosed to anyone except as permitted under this
20 agreement;
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1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information.
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4 4.3 Filing Confidential Material. Before filing confidential material or
5 discussing or referencing such material in court filings, the filing party shall confer
6 with the designating party to determine whether the designating party will remove
7 the confidential designation, whether the document can be redacted, or whether a
8 motion to seal or stipulation and proposed order is warranted.
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10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.
12 Each party or non-party that designates information or items for protection under
13 this agreement must take care to limit any such designation to specific material that
14 qualifies under the appropriate standards. The designating party must designate for
15 protection only those parts of material, documents, items, or oral or written
16 communications that qualify, so that other portions of the material, documents,
17 items, or communications for which protection is not warranted are not swept
18 unjustifiably within the ambit of this agreement.
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1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
4 to impose unnecessary expenses and burdens on other parties) expose the
5 designating party to sanctions.
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8 If it comes to a designating party's attention that information or items that it
9 designated for protection do not qualify for protection, the designating party must
10 promptly notify all other parties that it is withdrawing the mistaken designation.
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13 5.2 Manner and Timing of Designations. Except as otherwise provided in
14 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as
15 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
16 protection under this agreement must be clearly so designated before or when the
17 material is disclosed or produced.
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20 (a) Information in documentary form: (*e.g.*, paper or electronic documents
21 and deposition exhibits, but excluding transcripts of depositions or other pretrial or
22 trial proceedings), the designating party must affix the word "CONFIDENTIAL"
23 to each page that contains confidential material. If only a portion or portions of the
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1 material on a page qualifies for protection, the producing party also must clearly
2 identify the protected portion(s) (*e.g.*, by making appropriate markings in the
3 margins).
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5 (b) Testimony given in deposition or in other pretrial or trial proceedings:
6 the parties must identify on the record, during the deposition, hearing, or other
7 proceeding, all protected testimony, without prejudice to their right to so designate
8 other testimony after reviewing the transcript. Any party or non-party may, within
9 fifteen days after receiving a deposition transcript, designate portions of the
10 transcript, or exhibits thereto, as confidential.
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13 (c) Other tangible items: the producing party must affix in a prominent place
14 on the exterior of the container or containers in which the information or item is
15 stored the word "CONFIDENTIAL." If only a portion or portions of the
16 information or item warrant protection, the producing party, to the extent
17 practicable, shall identify the protected portion(s).
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22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
23 failure to designate qualified information or items does not, standing alone, waive
24 the designating party's right to secure protection under this agreement for such
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1 material. Upon timely correction of a designation, the receiving party must make
2 reasonable efforts to ensure that the material is treated in accordance with the
3 provisions of this agreement.
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5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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7 6.1 Timing of Challenges. Any party or non-party may challenge a
8 designation of confidentiality at any time. Unless a prompt challenge to a
9 designating party's confidentiality designation is necessary to avoid foreseeable,
10 substantial unfairness, unnecessary economic burdens, or a significant disruption
11 or delay of the litigation, a party does not waive its right to challenge a
12 confidentiality designation by electing not to mount a challenge promptly after the
13 original designation is disclosed.
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17 6.2 Meet and Confer. The parties must make every attempt to resolve any
18 dispute regarding confidential designations without court involvement. Any motion
19 regarding confidential designations or for a protective order must include a
20 certification, in the motion or in a declaration or affidavit, that the movant has
21 engaged in a good faith meet and confer conference with other affected parties in
22 an effort to resolve the dispute without court action. The certification must list the
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1 date, manner, and participants to the conference. A good faith effort to confer
2 requires a face-to-face meeting or a telephone conference.
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4 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
5 court intervention, the designating party may file and serve a motion to retain
6 confidentiality under Local Civil Rule 7.1. The burden of persuasion in any such
7 motion shall be on the designating party. Frivolous challenges, and those made for
8 an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens
9 on other parties) may expose the challenging party to sanctions. All parties shall
10 continue to maintain the material in question as confidential until the court rules on
11 the challenge. Nothing in this stipulation prevents any party or non-party to by
12 motion seek enhanced or additional confidentiality protections for a particular
13 document or documents.
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19 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
20 **PRODUCED IN OTHER LITIGATION**

21 If a party is served with a subpoena or a court order issued in other litigation
22 that compels disclosure of any information or items designated in this action as
23 “CONFIDENTIAL,” that party must:
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1 (a) promptly notify the designating party in writing and include a copy of the
2 subpoena or court order;
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4 (b) promptly notify in writing the party who caused the subpoena or order to
5 issue in the other litigation that some or all of the material covered by the subpoena
6 or order is subject to this agreement. Such notification shall include a copy of this
7 agreement; and
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10 (c) cooperate with respect to all reasonable procedures sought to be pursued
11 by the designating party whose confidential material may be affected.
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13 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED**
14 **MATERIAL**

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 confidential material to any person or in any circumstance not authorized under
17 this agreement, the receiving party must immediately (a) notify in writing the
18 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
19 all unauthorized copies of the protected material, (c) inform the person or persons
20 to whom unauthorized disclosures were made of all the terms of this agreement,
21 and (d) request that such person or persons execute the “Acknowledgment and
22 Agreement to Be Bound” that is attached hereto as Exhibit A.
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1 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
 2 **OTHERWISE PROTECTED MATERIAL**

3 When a producing party gives notice to receiving parties that certain
 4 inadvertently produced material is subject to a claim of privilege or other
 5 protection, the obligations of the receiving parties are those set forth in Federal
 6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 7 whatever procedure may be established in an e-discovery order or agreement that
 8 provides for production without prior privilege review. Parties shall confer on an
 9 appropriate non-waiver order under Fed. R. Evid. 502.
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13 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

14 Within 60 days after the termination of this action, including all appeals,
 15 each receiving party must return all confidential material to the producing party,
 16 including all copies, extracts and summaries thereof, or alternatively, must certify
 17 the party's use of an appropriate method of destruction.
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21 Notwithstanding this provision, counsel are entitled to retain one archival
 22 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
 23 correspondence, deposition and trial exhibits, expert reports, attorney work
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1 product, and consultant and expert work product, even if such materials contain
2 confidential material.
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4 The confidentiality obligations imposed by this agreement shall remain in
5 effect until a designating party agrees otherwise in writing or a court orders
6 otherwise.
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8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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11 DATED: June 11, 2013

s/Erin M. Cook

12 Attorneys for Plaintiff Genex Cooperative,
13 Inc.
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15 DATED: June 11, 2013

s/Farrah N.W. Rifelj

16 Attorneys for Defendants, Jorge T.
17 Contreras, Daniel R. Senn, Erasmo J.
18 Verduzco
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20 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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22 DATED: August 20, 2013

s/ Edward F. Shea

23 Hon. Edward F. Shea
24 Senior United States District Judge
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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Eastern District of
 Washington on [date] in the case of *Genex Cooperative, Inc. v. Jorge T. Contreras,*
Daniel R. Senn, and Erasmo J. Verduzco, Case No. 2:13-cv-03008-EFS. I agree to
 comply with and to be bound by all the terms of this Stipulated Protective Order
 and I understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that I will
 not disclose in any manner any information or item that is subject to this Stipulated
 Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Eastern District of Washington for the purpose of enforcing the terms
 of this Stipulated Protective Order, even if such enforcement proceedings occur
 after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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